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No. 113

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE POTTSTOWN IRON COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

INDEX

	Page
Memorandum for the United States	1
Question presented	1
Statutes involved	2
Statement	4

CITATIONS

Cases:

United States v. *Boston Buick Co.*, No. 632, October Term, 1929 — 6

United States v. *Iron Cap Copper Co.*, No. 633, October Term, 1929 — 6

United States v. *Swift & Co.*, No. 700, October Term, 1929 — 6

Statutes:

Revenue act of 1924, c. 234, sec. 1019, 43 Stat. 253, 346 (U. S. C., title 26, sec. 153) — 2–3

Revenue act of 1926, c. 27, sec. 1116, 44 Stat. 9, 119 (U. S. C. App., title 26, sec. 153) — 3–4

In the Supreme Court of the United States,

OCTOBER TERM, 1929

No. 892

THE POTTSTOWN IRON COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the petition in this case.

QUESTION PRESENTED

Prior to the passage of the Revenue Act of 1926 the Commissioner of Internal Revenue signed and transmitted to the Collector a certificate on Form 7805, stating that the overassessments appearing thereon had been allowed and directing the Collector to apply any overpayments against any taxes due from the taxpayers for other years. Also prior to the passage of the Revenue Act of 1926 the Collector informed the petitioner by letter that the credits had been so applied. Subsequent to the passage of the Revenue Act of 1926, the Collector signed and certified the schedule of overassessments, together with Form 7805–A, showing the amounts credited and the amounts refundable. The Commissioner

thereafter signed Form 7805–A, directing the disbursing clerk to make payment of the amounts refundable. The question is:

Whether interest on the credits should be computed under Section 1019 of the Revenue Act of 1924 or under Section 1116 of the Revenue Act of 1926; or to state it another way, whether the credits were "taken" when the Commissioner signed the schedule of overassessments, Form 7805, or when the Collector made the entry of the credits on his records, or when the Commissioner signed the schedule of refunds and credits, Form 7805–A.

STATUTES INVOLVED

Section 1019 of the Revenue Act of 1924, c. 234, 43 Stat. 253, 346 (U. S. C., Title 26, Sec. 153), provides:

> SEC. 1019. Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assess-

ment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Section 1116 of the Revenue Act of 1926, c. 27, 44 Stat. 9, 119 (U. S. C. App., Title 26, Sec. 153), provides:

> SEC. 1116. (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.
>
> (b) As used in this section—
>
> (1) The term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;
>
> (2) The term "date of the allowance of the refund" means, in the case of any income, war-profits, or excess-profits tax, the first

date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.

STATEMENT

On January 29, 1926, the Commissioner of Internal Revenue signed a schedule of overassessments on Form 7805, which included overpayments made by the petitioner for the years 1918, 1919, and 1920. This schedule was transmitted to the Collector for his action in accordance with the directions appearing thereon. (R. 17.) On February 23, 1926, in response to an inquiry from the petitioner, the Collector informed the petitioner that $229,719.22 of the overassessment had been applied as a credit against deficiencies in taxes for the years 1916 and 1917. (R. 18.) The Revenue Act of 1926 became a law on February 26, 1926. On February 27, 1926, the Collector signed and certified the schedule of overassessments, together with the corresponding schedule on Form 7805–A. (R. 17.)

On April 15, 1926, the Commissioner signed the schedule of refunds and credits, Form 7805–A, and authorized the disbursing clerk to make payment of the amounts refundable. Treasury checks for these amounts, together with copies of certificates of overassessment, were thereafter mailed to the petitioner. (R. 17.)

Under Section 1019 of the Revenue Act of 1924 (pp. 2–3, *supra*) interest on credits against additional assessments was payable from the date of the overpayment to the date of the assessment of the additional tax against which credit was applied. But under Section 1116 of the Revenue Act of 1926 (pp. 3–4, *supra*), which became effective February 26, 1926, the situation was changed with respect to overpayments and additional assessments for years prior to 1921. That Section provided for the payment of interest from the date of the overpayment only to the date on which the additional tax against which the overpayment is credited should have been paid. By subdivision (c) of Section 1116, that Section was made applicable—

> to any credit *taken*, on or after the date of the enactment of this Act, even though such * * * credit was allowed prior to such date.

The petitioner contends that the credits here involved were "taken" prior to February 26, 1926. The Court of Claims held (R. 21) that the credit was "taken" on April 15, 1926, when the Commissioner signed the schedule of refunds and credits, and that consequently Section 1116 of the Revenue Act of 1926 was applicable.

The decision below involves the question of when a credit was "taken." Three cases involving the closely related question as to the date of the "allowance" of a credit, arising under the Revenue Acts

of 1921 and 1924 are now pending before this Court. *United States* v. *Boston Buick Co.*; No. 632, October Term, 1929, *United States* v. *Iron Cap Copper Co.*, No. 633, October Term, 1929; *United States* v. *Swift & Co.*, No. 700, October Term, 1929.

For the reason that this closely related question is already before this Court, and because the question in the instant case is presented in numerous other pending cases, the United States does not oppose the granting of the writ of certiorari.

Respectfully submitted.

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